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Board (PERB)

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7-23-1976

## State of New York Public Employment Relations Board Decisions from July 23, 1976

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from July 23, 1976

### Keywords

NY, NYS, New York State, PERB, Public Employee Relations Board, board decisions, labor disputes, labor relations

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2A-7/23/76

UNITED TEACHERS OF NORTHPORT,

Respondent,

BOARD DECISION AND ORDER

-and-

BOARD OF EDUCATION, NORTHPORT-EAST NORTHPORT

CASE NO. U-2013

UNION FREE SCHOOL DISTRICT,

Charging Party.

The charge herein was filed by the Board of Education of the Northport-East Northport Union Free School District (charging party). It alleged that the United Teachers of Northport (respondent) failed to negotiate in good faith in violation of Civil Service Law Section 209-a.2(b) in that it improperly insisted upon the negotiation of demands that are not mandatory subjects of negotiations. The charge also alleged that respondent refused to specify its wage demand. Respondent's answer submitted on March 26, 1976 denied so much of the charge as alleged that certain demands made by it are not mandatory subjects of negotiations. It also denied the allegation that it had refused to specify its wage increase demand.

On April 15, 1976, charging party withdrew that part of its charge which alleged that respondent had refused to specify its wage increase demand. This left only scope of negotiations issues. With respect to those, charging party requested expedited treatment under Section 204.4 of our Rules. Charging party's letter of April 15, 1976 also amended the charge to withdraw from it three items that it had alleged to be non-mandatory, but about which it no longer took that position. Remaining were nine new respondent negotiations demands that charging party alleged to be non-mandatory subjects of negotiations. Also remaining were demands to carry into the new contract twelve clauses of

the prior contract which charging party alleged to be non-mandatory.

After several communications and at least one conference, the Director of Public Employment Practices and Representation notified the parties on May 14, 1976 that the dispute would be accorded expedited treatment. Another conference was held on June 2, 1976. At that conference respondent raised several defenses to the charge. As one of its defenses, it argued that the charge and the request for expedited determination were premature because the impasse had not gone to factfinding and no improper practice can exist until respondent insists upon non-mandatory subjects during or after factfinding.

This argument is supported by the facts and is based upon a correct understanding of the law. The matter before us was brought by a charge alleging that respondent has improperly insisted upon the negotiation of non-mandatory subjects of negotiations. In Matter of Board of Higher Education of the City of New York, 7 PERB ¶13028 (1974) and Matter of Yorktown Faculty Association, 7 PERB ¶13030 (1974), we have indicated our acceptance of the private sector rule in NLRB v. Borg Warner Corp., 35 US 392 (1955), that a party may propose for agreement matters that are not mandatory subjects of negotiations, but may not press such a proposal to the point of insistence. In the Board of Higher Education case, we said,

"It is, of course, difficult to draw a precise line between appropriate conduct by proposing non-mandatory contract terms and inappropriate insistence upon such a demand. We determine that the insistence on the demand in the instant case went too far when, over the objections of BHE, it was carried into factfinding and even beyond factfinding."

In the instant case we now determine that respondent, not having carried its demands into factfinding, has not gone too far and, thus, has not violated its duty to negotiate in good faith.

There is no procedure for declaratory judgments concerning scope of negotiations. The omission of such a procedure is not inadvertent. The policy underlying the Taylor Law is that public employers and employee organizations representing public employees should negotiate with each other and enter into written agreements (CSL §200). Those agreements may, but need not, extend to non-mandatory subjects of negotiations (Matter of Susquehanna Valley School District at Conklin [Susquehanna Valley Teachers Association] 37-NY2d 614).

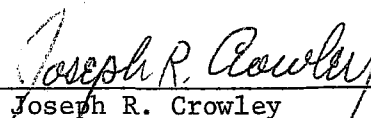
Frequently demands which may involve non-mandatory subjects of negotiations are resolved in the give-and-take of negotiations at the bargaining table. Agreements so arrived at, which are as likely to benefit one party as the other -- and most frequently both -- are to be preferred to the litigation before us of scope of negotiations questions that declaratory judgment procedures would encourage. It is only when demands for non-mandatory subjects of negotiations impede or inhibit the bargaining process that the legal processes of this Board ought be invoked.

NOW, THEREFORE, WE ORDER that the charge herein be, and hereby is,  
dismissed.

Dated: Albany, New York  
July 23, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

4352

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ELLENVILLE TEACHERS ASSOCIATION,

Respondent,

-and-

ELLENVILLE CENTRAL SCHOOL DISTRICT,

Charging Party.

#2B-7/23/76

BOARD DECISION AND ORDER

CASE NO. U-2062

The charge herein was filed by the Ellenville Central School District (charging party) on March 25, 1976. It alleged that the Ellenville Teachers Association (respondent) failed to negotiate in good faith in violation of Civil Service Law Section 209-a.2(b) in that it improperly insisted upon the negotiation of demands that are not mandatory subjects of negotiations. The charge specified approximately thirty demands of respondent that it alleged to be non-mandatory subjects of negotiations. Of these, approximately half were provisions that were found to be in the prior contract and the balance were new demands. Subsequently, the charge was amended by deleting reference to three of the respondent's demands. Charging party seeks expedited treatment of the scope of negotiations questions under Section 204.4 of our Rules.

In its response to the charge, respondent raised four defenses. The first was that the charge was premature and, thus, defective. The remaining three were directed to other procedural and substantive positions. It is unnecessary for us to reach any of those defenses as the first one is supported by the facts and is based upon a correct understanding of the Law. No impasse was declared in the negotiations between charging party and respondent until April 9, 1976, and the first factfinding session was held on June 22, 1976.

4353

The matter before us was brought by a charge alleging that respondent has improperly insisted upon the negotiation of non-mandatory subjects of negotiations. In Matter of Board of Higher Education of the City of New York, 7 PERB ¶13028 (1974) and Matter of Yorktown Faculty Association, 7 PERB ¶13030 (1974), we have indicated our acceptance of the private sector rule in NLRB v. Borg Warner Corp., 35 US 392 (1955), that a party may propose for agreement matters that are not mandatory subjects of negotiations, but may not press such a proposal to the point of insistence. In the Board of Higher Education case, we said,

"It is, of course, difficult to draw a precise line between appropriate conduct by proposing non-mandatory contract terms and inappropriate insistence upon such a demand. We determine that the insistence on the demand in the instant case went too far when, over the objections of BHE, it was carried into factfinding and even beyond factfinding."

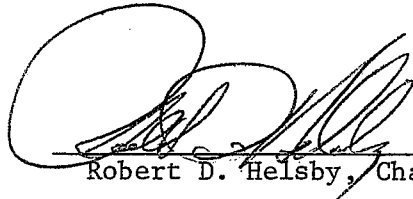
In the instant case, since the charge was filed prior to an impasse being declared, it is clear that the respondent had not pressed such proposals to the point of insistence and, thus, had not violated its duty to negotiate in good faith.

There is no procedure for declaratory judgments concerning scope of negotiations. The omission of such a procedure is not inadvertent. The policy underlying the Taylor Law is that public employers and employee organizations representing public employees should negotiate with each other and enter into written agreements (CSL §200). Those agreements may, but need not, extend to non-mandatory subjects of negotiations (Matter of Susquehanna Valley School District at Conklin [Susquehanna Valley Teachers Association] 37 NY 2d 614). Frequently demands which may involve non-mandatory subjects of negotiations are resolved in the give-and-take of negotiations at the bargaining table. Agreements so arrived at, which are as likely to benefit one party as the other -- and most frequently both -- are to be preferred to the litigation before us of

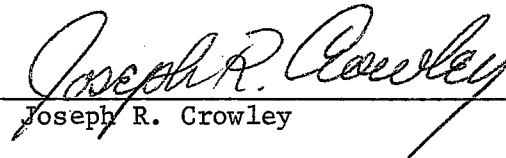
scope of negotiations questions that declaratory judgment procedures would encourage. It is only when demands for non-mandatory subjects of negotiations impede or inhibit the bargaining process that the legal processes of this Board ought be invoked.

NOW, THEREFORE, WE ORDER that the charge herein be, and hereby is,  
Dismissed.

Dated: Albany, New York  
July 23, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS B. and D

In the Matter of :  
RIVERHEAD CENTRAL SCHOOL DISTRICT, : #2C-7/22/76  
-and- Employer, :  
LOCAL 100, S.E.I.U., AFL-CIO, :  
-and- Petitioner, : CASE NO. C-1321  
RIVERHEAD CENTRAL SCHOOL DISTRICT UNIT;  
CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC., :  
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that RIVERHEAD CENTRAL SCHOOL DISTRICT UNIT, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All full and part-time non-instructional employees.

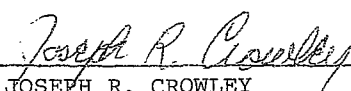
Excluded: Superintendent of buildings and grounds, school lunch supervisor, supervisor of transportation, teacher aides, substitutes, personal secretary to chief school administrator and the assistant district principal, and all other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with RIVERHEAD CENTRAL SCHOOL DISTRICT UNIT, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 22nd day of July, 19 76.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

4356

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
MALVERNE PUBLIC LIBRARY, :  
Employer, : #2D-7/22/76  
-and- :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, : CASE NO. C-1363  
INC., NASSAU CHAPTER, :  
Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Civil Service Employees Association, Inc., Nassau Chapter

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: All full and part time employees of the library.

Excluded: Pages, librarian I, library director and all other employees.

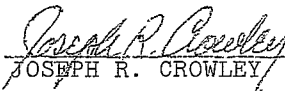
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Civil Service Employees Association, Inc., Nassau Chapter

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 22nd day of July, 1976.



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



IDA KLAUS

4257

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
WASHINGTON COUNTY (HIGHWAY DEPARTMENT), : #2E-7/22/76  
Employer, :  
- and - : CASE NO. C-1364  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, :  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF :  
AMERICA, LOCAL 294, :  
Petitioner. :  
:

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 294

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All employees of the Washington County Highway Department in the position of laborer, preferred laborer, motor equipment operator, motor equipment operator (truck), radio dispatcher, automotive mechanic, automotive mechanic-welder and maintenance helper.

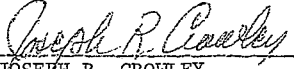
Excluded: Laborer - summer help, foreman and all other employees.


Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 294

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 22nd day of July, 19 76.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

4358

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
BOARD OF EDUCATION OF THE CITY SCHOOL : #2F-7/22/76  
DISTRICT OF THE CITY OF SCHENECTADY, :  
Employer, :  
-and- :  
NEW YORK EDUCATORS ASSOCIATION, :  
(SCHENECTADY ADULT EDUCATORS ASSOCIA- : CASE NO. C-1368  
TION) Petitioner, :  
-and- :  
LOCAL 200, SERVICE EMPLOYEES INTERNA- :  
TIONAL UNION, AFL-CIO, :  
Intervenor. :  
:

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that NEW YORK EDUCATORS ASSOCIATION (SCHENECTADY ADULT EDUCATORS ASSOCIATION)

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All teachers and guidance counselors  
in the morning and afternoon Adult  
Basic Education Program and General  
Equivalency Diploma Program.

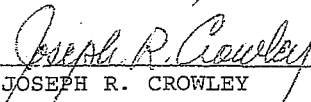
Excluded: All substitutes and all other employees  
of the Adult Basic Education Program and  
General Equivalency Diploma Program.

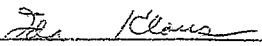
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with NEW YORK EDUCATORS ASSOCIATION, (SCHENECTADY ADULT EDUCATORS ASSOCIATION).

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 22nd day of July , 1976 .

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

4359

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :  
CITY OF ITHACA, :  
Employer, : #2G-7/22/76  
-and- :  
TOMPKINS COUNTY CHAPTER, C.S.E.A. : CASE NO. C-1372  
Petitioner, :  
-and- :  
LABORERS' INTERNATIONAL UNION, :  
LOCAL 589, :  
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Tompkins County Chapter, C.S.E.A.

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Hourly rated employees of the Department of Public Work of the City of Ithaca through the grade of foreman.

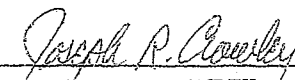
Excluded: Seasonal and all other employees.

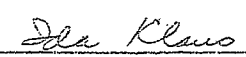
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Tompkins County Chapter, C.S.E.A.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 22nd day of July, 1976.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

4360

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :  
TOWN OF FORESTBURGH, HIGHWAY DEPART- :  
MENT, : #2H-7/22/76  
Employer, :  
-and- :  
SERVICE EMPLOYEES INTERNATIONAL UNION, : CASE NO. C-1375  
AFL-CIO, LOCAL 32E, :  
Petitioner. :  
:

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, LOCAL 32E

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All regular full time truck drivers, equipment operators and handlers, and general laborers.

Excluded: The superintendent and all other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, LOCAL 32E.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 22nd day of July , 1976 .



ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY  
IDA KLAUS

4361